

Memorandum

Financial Services Department



Date: November 26, 2003
To: Mayor and Councilmembers
From: Jim Cristea, Downtown Vending Committee Chair
Subject: Pushcart Vending Issues

Staff seeks direction from Council on whether or not to:

1. Discontinue pushcart vending in public rights of way and transfer to private ownership areas.
2. Divert the processing of sidewalk cafe/kiosk applications to a staff level.
4. Continue licensing street entertainers.
5. Rewrite the ordinance to streamline the processes for pushcart vending, sidewalk cafes, kiosks and street entertainers.
6. Sunset the Downtown Vending Committee and rewrite the Vending Ordinance.

BACKGROUND INFORMATION

In 1993, the Downtown Vending Committee was established in order to create and evaluate criteria for pushcart vending, sidewalk cafes, kiosks, street entertainers and mobile merchants. This committee meets on an as needed basis and makes recommendations to the City Council regarding the licensure of these activities, as well as changes to Chapter 24 of the City Code concerning these activities. The committee consists of six people: two individuals from the Development Services Department (one of which is from the design review staff), one representative each from the city's police and public works departments, one representative from the Downtown Tempe Community, Inc., and one representative from the general public.

The Downtown Vending Committee met to discuss what has and has not worked regarding Chapter 24:

Things that have worked:

- ✓ The Tempe Downtown Vending Committee represents a diverse community perspective regarding downtown vending

Things that have not worked:

- ✓ Ordinance is written in a convoluted fashion
- ✓ Committee needs clear direction from Council regarding their vision of street vending
- ✓ Staff coordination needs to be improved during the application review process

- ✓ Pushcart vending has not been successful; no pushcart vendors have remained in business beyond one year
- ✓ Lack of consistency regarding requirements for different geographic vending locations (Rio Salado, downtown, anywhere else in Tempe – all have different processes and points of contact)
- ✓ Merchants feel disenfranchised when the City allows pushcart vending

Staff is seeking direction regarding whether or not to continue pushcart vending in the downtown, and if so, how the process could be improved. The current application process takes approximately four months to complete. Even though pushcart vending has not been successful in the downtown, the Tax and License Division gets inquiries on a regular basis from people who would like the opportunity to vend in downtown Tempe.

Downtown merchants have expressed concern regarding the competition that pushcart vending creates among area businesses and that it is unfair to merchants who pay high rent and taxes. Another concern is that vendors are currently required to vend a minimum of 10 days per month, which is difficult to monitor and enforce and has been the source of various complaints from downtown merchants, including the Mill Avenue Merchants Association.

The following is an approximate cost breakdown by department to process pushcart vending applications:

Building Safety	2 hrs @ \$52.57 = \$105.14
City Clerk	1 hr @ \$47.71 = \$47.71
Design Review	2 hrs @ \$48.99 = \$97.98
Engineering	8 hrs @ \$52.28 = \$418.24
Police Department	5 hrs @ \$53.43 = \$272.15
Purchasing	21 hrs @ \$ 46.10 = \$968.10
Tax/License	4 hrs @ \$50.47 = \$201.88

Total: \$2,112.20

These estimates do not include board and commission volunteer time for individuals that serve on the Downtown Vending Committee, nor do they reflect legal consultation fees or the time it takes for the City Council to study these projects.

Between January 2001 up to the present, five individuals have applied for pushcart vending licenses. Of these five people, two applicants were approved, one applicant was denied by the City Council, one applicant never responded to the RFP and one application is currently being processed (for the southwest corner of Fifth Street and Mill Avenue). The amount of fees paid by these applicant's totals approximately \$3,000 whereas it cost the city approximately \$10,000 to process these applications.

Should Council wish to continue pushcart vending activity, staff proposes that the process be streamlined by making the following modification to Chapter 24 of the Tempe City Code:

- Remove the Request for Proposal requirement for pushcart vending
- Remove the lease agreement currently required for pushcart vending (because this activity is of a temporary nature)
- Remove Council approval of pushcart vending, sidewalk café and kiosk licenses

The above mentioned modifications will make the application processing time go from approximately four months to a worst case scenario of approximately 60 days, depending upon the number of public hearings required. It should also be noted that the workload impact to Development Services would be minimally impacted by the recommended changes.

Prior to the revitalization of the downtown, the Downtown Vending Committee believed that their role as a committee had diminished and that they should be disbanded by the Mayor and City Council. Committee members and staff agreed that staff could more efficiently process all applications at the staff level, as long as an appeal process is created that would give applicants a higher authority to appeal a denied application. Aside from downtown pushcart vending, vendors have three additional opportunities to vend in Tempe:

1. Vend in the Rio Salado Town Lake area.
2. Use Permit, by obtaining the written permission from a private property owner in order to apply for a Use Permit.
3. Special events, by working with the event promoter.

Although the above mentioned issues do not pertain to sidewalk cafés and kiosks, staff would like to propose similar changes to the ordinance requirements outlined above to increase the efficiency of processing these applications as well.

It should be noted that the ordinance currently prohibits vendors from selling products a minimum distance of 200' from an existing business that sells like type products. However, the courts have ruled that it is unconstitutional to regulate what products or services are sold, in terms of competing products within the vicinity of one another. Because of this, staff would like to eliminate the minimum square footage requirement in the ordinance and base approval upon other agreed upon criteria.

The former Finance and Economic Development Council Committee asked staff to draft a rewrite of the Tempe City Code Chapter 24 relating to pushcart vending issues. At the October 15, 2003 Finance & Diversity Council Committee meeting, staff proposed that the sidewalk café, kiosk, street entertainer and mobile merchant portions of the ordinance also be addressed at the same time. Staff reviewed with the members of the committee various options for your consideration as follows:

PUSHCART VENDING (One vendor is currently licensed)

- 1) ***Eliminate pushcart vending in the public right-of-way (supported by Downtown Tempe Community, Inc.); sunset the Downtown Vending Committee. (Committee recommendation)***
- 2) Rewrite the ordinance to streamline the process, and retain the assistance of the Downtown Vending Committee.
- 3) Make no changes to the existing ordinance for processing pushcart vending applications

SIDEWALK CAFÉ (16 establishments currently licensed)

- 1) ***Rewrite the ordinance to streamline the process; sunset the Downtown Vending Committee. (Committee recommendation)***
- 2) Rewrite the ordinance to streamline the process, and retain the assistance of the Downtown Vending Committee.
- 3) Make no changes to the existing ordinance for processing sidewalk café applications

KIOSKS (2 kiosks currently licensed)

- 1) ***Rewrite the ordinance to streamline the process; sunset the Downtown Vending Committee. (Committee recommendation)***
- 2) Rewrite the ordinance to streamline the process, and retain the assistance of the Downtown Vending Committee.
- 3) Make no changes to the existing ordinance for processing kiosk applications

STREET ENTERTAINERS (150 currently licensed)

- 1) ***Eliminate this license. (Committee recommendation)***
- 2) Make no changes to the existing ordinance for processing street entertainer applications

MOBILE MERCHANTS:

- 1) ***Revise the fee schedule to make it consistent with other license and renewal fees. (Committee recommendation)***
- 2) Make no changes to the existing ordinance for processing mobile merchant applications